

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
11 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Hearing Date/Agenda Number
P.C. 7/28/04 Item: 3.b.

File Number
CP04-030

Application Type
Conditional Use Permit

Council District
1

Planning Area
West Valley

Assessor's Parcel Number(s)
305-03-014

PROJECT DESCRIPTION

Completed by: Lori Moniz

Location: Southwest corner of Winchester Boulevard and Cadillac Drive (1511-1515 Winchester Boulevard)

Gross Acreage: 0.9

Net Acreage: 0.9

Net Density: n/a

Existing Zoning: CP Commercial Pedestrian

Existing Use: Retail/commercial (grocery store)

Proposed Zoning: No change

Proposed Use: Retail/commercial (grocery store) with sale of alcoholic beverages for off-site consumption

GENERAL PLAN

Completed by: LM

General Use/Transportation Diagram Designation
General Commercial

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: LM

North: Commercial

CP Commercial Pedestrian

East: Commercial

CP Commercial Pedestrian

South: Single-family detached residential

CP Commercial Pedestrian and R-M Residence

West: Single-family detached residential

R-M Residence

ENVIRONMENTAL STATUS

Completed by: LM

Environmental Impact Report found complete
Negative Declaration circulated on
Negative Declaration adopted on

☒ Exempt
☐ Environmental Review Incomplete

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: LM

Department of Public Works

None Received

Other Departments and Agencies

Police Department and SNI Staff.

GENERAL CORRESPONDENCE

Winchester Neighborhood Advisory Committee (NAC)

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant, Jose Godinez, is requesting a Conditional Use Permit (CUP) to allow sales of alcoholic beverages for off-site consumption at an existing commercial tenant space located at 1511-1515 Winchester Boulevard, in the CP Commercial Pedestrian Zoning District. The Zoning Ordinance requires a CUP for off-sale of alcoholic beverages in the CP Commercial Pedestrian Zoning District. The California State Department of Alcoholic Beverage Control (ABC) in coordination with the San José Police Department have determined that a Liquor License Exception Permit is **not** required for this location; see Analysis section below. However, the applicant will be required to obtain a Liquor License from the State prior to commencing the sale of alcohol.

The proposed use is to be located in an existing tenant space in a small commercial building that is oriented towards Winchester Boulevard. Other nearby development includes commercial uses to the north and east, and single-family residences to the west and south of this tenant space.

Project Description

The applicant's stated intention is to sell beer and wine as part of a small, 6040 square foot, existing grocery store (Los Cuates Mercado y Carniceria). The retail sale of grocery items is allowed by right in the CP Commercial Pedestrian Zoning District. This CUP addresses sale of alcoholic beverages

proposed use is for the sale of alcoholic beverages at an existing tenant space in an existing commercial building. It is staff's opinion that the proposal adequately conforms to this section of the CEQA Guidelines.

GENERAL PLAN CONFORMANCE

The proposed off-sale of alcoholic beverages at an existing commercial retail use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of General Commercial.

ANALYSIS

The key issues analyzed for the proposed project include: 1) conformance to the Zoning Ordinance regulations related to the off-sale of alcoholic beverages, and 2) neighborhood compatibility. As described in greater detail below, it is staff's opinion that the proposed project adequately conforms to the criteria related to these issues.

Conformance to the Zoning Ordinance

The project includes off-sale of alcoholic beverages (i.e., the sale to consumers of alcoholic beverages in original, unopened packages for consumption off the premises where sold). The Zoning Ordinance requires a Conditional Use Permit for off-sale of alcohol in the CP Commercial Pedestrian Zoning District. In accordance with Section 20.80.900, the Planning Commission may issue a Conditional Use Permit for off-sale of alcoholic beverages only upon making the following findings, where applicable:

1. *For such a use at a location closer than 500 feet from any other such use either within or outside the City that the proposed location of the off-sale alcohol use would not contribute to an excess concentration of establishments which sell alcoholic beverages.*

There are three (3) other off-sale retail establishments within 500 feet of the subject site including U-Save Liquors @ 1575 Winchester Boulevard (City of Campbell), 7 Eleven @ 1444 Winchester Boulevard and F & W Liquors @ 3127 Williamsburg Drive. Each of these stores is located between 470 and 500 feet from the subject site. The Zoning Ordinance does not clearly establish a threshold to define "excess concentration." However, in recent years upon the creation of the

items. The owners of the store have worked with the Winchester NAC and The State ABC Office and have agreed to limit the floor area for the sales of alcoholic beverages to 15% (maximum) of the overall retail area.

Given the separation of almost 500 feet from other such uses and relative differences in the nature of this retail business as compared to other establishments in this area that also sell alcoholic beverages, it is staff's opinion that the proposed use would not constitute an excess concentration of such uses.

2. *For such a use at a location closer than 500 feet from any child care center, elementary school, secondary school, college or university, or one hundred fifty (150) feet from any residentially zoned property that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential and/or school use.*

There are no schools or licensed day care centers within 500 feet of the site. The site is located adjacent to residential properties on two sides. However, the site is substantially walled off from the residential area and the existing commercial building is not oriented toward the existing residential uses.

As noted above in the Background section, the applicant is not applying for a Liquor License Exception Permit and is not required to do so. A Liquor License Exception Permit is required for liquor license applicants when the ABC determines that a liquor license application would result in an undue concentration within the census tract. An Exception is also required when the Police service investigative information (including, but not limited to, site-specific neighborhood analysis of calls for service) indicates that the "Police beat" area in which the premises is located has had an unusually high number of service calls for certain types of crimes. Neither of these conditions is applicable to the current proposal. The attached memo from the Police Department Vice Unit indicates that an Exception is not required relative to the crime statistics.

Neighborhood Compatibility

The proposed use would be in conjunction with a small grocery store/meat market and is expected to function much like any other retail-type commercial land use that has taken place on the site. The sale of alcoholic beverages is intended to be incidental to the overall existing commercial use. It is Planning staff's opinion that due to the secondary nature of the sale of alcohol to the primary use of grocery sales, the proposed land use is not likely to generate any adverse impacts on the nearby residences, given its secondary nature and the orientation of such uses away from the residential

The subject site is within the Winchester Strong Neighborhood Initiative Area (SNI). The Winchester Neighborhood Action Committee (NAC) initially opposed the project at their April 21, 2004 meeting. However, after meeting with the applicant to discuss their concerns, the NAC reconsidered their position at their June 16, 2004 meeting and voted to support the application in conjunction with requesting that certain conditions be added to the ABC license. The applicant has in a separate arrangement, agreed to the NAC's conditions. One of the conditions requested was that no more than 15% of the square footage of the premises sales area be used for the sale of alcoholic beverages. Staff recommends that a limitation on the percentage of sales area devoted to alcohol sales be included as a condition in the Conditional Use Permit to ensure the secondary nature of this use. By restricting the amount of space that can be used for alcohol sales, the existing grocery store would not be able to convert into a liquor store without seeking Planning approval through the Conditional Use Permit process.

A memo dated April 21, 2004 and subsequent e-mail message from Officer Dave Kirkendall of the San José Police Department's Vice Unit states that the subject site is not in a crime-impacted area and that the SJPd has no objections to the proposed project.

Conclusion

The proposal conforms to the requirements of the Zoning Ordinance. The building in which the proposed use is to be located is situated such that business activities associated with this proposal would not adversely affect the nearby residences or other nearby land uses. The off-sale of alcohol at this location is not expected to prove detrimental to the neighborhood.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The project site is located on the southwest corner of Winchester Boulevard and Cadillac Drive (1511-1515 Winchester Boulevard) in a small commercial building.

2. The site has a designation of General Commercial on the adopted San José 2020 General Plan

20.100.720.

7. The proposed use is located within 500 feet of three other establishments that sells alcoholic beverages for off-sale consumption.
8. The State Department of Alcohol Beverage Control has determined that a liquor license application at this location would not result in an undue concentration of similar such uses within the census tract and therefore does not require a Liquor License Exception.
9. The project site is located within census tract 5065.01.
10. The proposed use is not located within 500 feet of a licensed childcare center or school.
11. This site is located within 150 feet of existing residential uses, however these uses are oriented away toward other streets.
12. The subject site is not located in one of the census tracts identified by the City Council as restricted areas for off-sale of alcohol.
13. The Police Department Special Investigation/Vice unit has confirmed that the site is not located in an area with an over-20% crime index, therefore does not require a Liquor License Exception.
14. A memo dated April 21, 2004 and subsequent e-mail message from Office Dave Kirkendall of the San José Police Department's Vice Unit states that the subject site is not in a crime-impacted area and that the SJPD has no objections to the proposed project.
15. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
16. The Winchester Neighborhood Action Committee (NAC) has indicated support of the proposal provided that the existing grocery store limit the sales of alcoholic beverages to 15% of the total floor area for the business.
17. The project includes a special condition, as noted above, related to the recommendations of the

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth are hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect, and the subject property shall not be used for the hereby permitted uses, unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **No New Construction.** No additional construction or development is approved under this permit.
3. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
5. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
6. **Off-Sale of Alcoholic Beverages.** This permit allows the sale of alcoholic beverages for off-site consumption.
7. **Alcoholic Beverage Control.** The off-sale of alcoholic beverages is allowed in conformance with the requirements of the Department of Alcohol Beverage Control (ABC). The applicant shall obtain all necessary permits maintain full compliance and in good standing with the Department of

adoption is the date the Resolution granting this Conditional Use Permit/Liquor License Exception Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.

2. **Revocation, Suspension, Modification.** This Conditional Use Permit/Liquor License Exception Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Conditional Use Permit/Liquor License Exception Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

Attachments:

- ✍ Police memo
- ✍ SNI memo
- ✍ Letter from Winchester NAC and applicant to ABC